HOUSE OF ASSEMBLY

NEWFOUNDLAND AND LABRADOR

ANNUAL REPORT

OF

THE COMMISSIONER OF MEMBERS' INTERESTS

1997-98

SEPTEMBER 16, 1998

103-04024/

HOUSE OF ASSEMBLY

NEWFOUNDLAND AND LABRADOR

ANNUAL REPORT

OF

THE COMMISSIONER OF MEMBERS' INTERESTS

1997-98

SEPTEMBER 16, 1998

House of Assembly

NEWFOUNDLAND AND LABRADOR

COMMISSIONER OF MEMBERS' INTERESTS

39 Hallett Crescent, O'Leary Industrial Park
St. John's, Nfld., Canada, A1B 4C4

Telephone: (709) 729-0714 Facsimile: (709) 729-0679

September 16, 1998

Honourable Lloyd Snow
Speaker
House of Assembly
Province of Newfoundland

Dear Speaker:

I am pleased to present the 1997-98 Annual Report of the Commissioner of Members' Interests for tabling in the Legislature pursuant to Section 35 of the House of Assembly Act as amended.

I am also submitting a brief update of my activities for a portion of the previous reporting period, from the date of my appointment by the Legislature on December 16, 1996, to the end of the 1996-97 reporting period, being March 31, 1997.

Sincerely yours,

Robert J. Jenkins

Robert J. Jenkins, L.V.O.
Commissioner of Members' Interests

INTRODUCTION

Report for the 1996-97 period from the date of initial appointment as Commissioner of Members' Interests on December 16, 1996, to March 31, 1997

While my appointment as Commissioner of Members' Interests was approved by resolution of the House of Assembly on December 16, 1996, it was not until January 13, 1997, that I actually assumed office. The interim period was spent completing my assignment as Deputy Minister responsible for Strategic Social Planning and in deliberations with my predecessor, Mr. D. Wayne Mitchell, prior to his assuming new duties as Private Secretary to His Honour the Lieutenant-Governor. During the balance of the 1996-97 reporting period, very little activity occurred with respect to material changes in members' interests required to be reported to the Commissioner pursuant to Section 36(4) of the Act. This afforded me the opportunity to review in detail and become familiar with the 1996-97 Annual Disclosure of Private Interests and the Public Disclosure Statement of each individual member along with material related thereto on file. I note that my scrutiny of this material which was submitted to my predecessor in keeping with the provisions of the legislation, showed all members as being in compliance with the filing requirements. During this period, no applications were received from members for my opinion with respect to compliance matters, nor did I receive any request by resolution of the House of Assembly to conduct an enquiry with respect to any member.

By letter to each individual member dated March 3, 1997, the process of completing and submitting Annual Disclosure of Private Interests by April 1, 1997, for the 1997-98 filing period was commenced.

CONFLICT OF INTEREST 1997-1998 REPORTING PERIOD
(April 1, 1997 to March 31, 1998)

Introduction

For the 1997-98 reporting period, no formal requests were received by the Commissioner from any member requesting that I give an opinion respecting the compliance of another member with the provisions of Part II-Conflict of Interest of the Act. Nor did I receive by resolution of the House of Assembly, a request to give an opinion on a matter respecting the compliance of a member with the provisions of Part II.

From time to time various representatives of the media contacted the Commissioner requesting information. In each case, the individuals were advised of the provisions of the Act of particular interest to them and were informed of the process outlined in the legislation for dealing with conflict of interest of members. While every effort is made to provide the media with information pertaining to the legislation in order to assist them in their particular research, it is not the role of the Commissioner to respond to specific questions by the media pertaining to members' interests or possible conflicts. The Act clearly outlines a process to be followed in referring issues to the Commissioner for investigation.

I. Commencement of the process of filing of Annual Disclosure of Private Interests by Members

The process of filing of Annual Disclosure of Private Interests by members was initiated by way of personal letter from the Commissioner to each of the 48 members under date of March 3, 1997. Enclosed with my correspondence was the Annual Disclosure of Private Interests booklet with instructions which members were to complete and submit to the Commissioner by April 1, 1997. My correspondence to members offered my assistance as may be required by them in providing the information to be filed.

For the most part, I found members to be diligent and anxious to ensure that their Annual Disclosure contained all the information and detail required to be submitted to the Commissioner. In only very few cases was it obvious that the completion of the Annual Disclosure form by the member was less than satisfactory, requiring further communication by the Commissioner.

II. Compliance with Filing Deadline

With the exception of only two members, all Annual Disclosure forms were filed with the Commissioner on or before April 1, 1997. In the case of one of the late filings, the member in question contacted me and offered an acceptable explanation for not meeting the deadline. Shortly thereafter, the member's completed annual disclosure was received. In only one instance was a member weeks beyond the April 1, 1997 deadline in filing without satisfactory explanation and then only after repeated requests from my office to comply with the filing requirement. My observation would suggest that the member was in no way endeavouring to subvert the provision of private interest information to avoid a conflict of interest but merely appeared to be disinterested in fulfilling his obligations to file under the legislation. There being no specific penalty provision in the Act with respect to late filing, only my repetitive communication with the respective member appears to have ultimately led to his filing.

III. Meeting with the Honourable the Premier

At his personal request, a meeting was held with Premier Tobin on March 27, 1997, at which time he re-affirmed his commitment to ensuring that he and all members of his Cabinet were in full compliance with the legislation. I am appreciative of the Premier's personal interest and commitment in this regard, and to the assurance of his personal commitment to the process.

IV. Resignation of Dr. Rex Gibbons as Minister of Mines and Energy and Member for the District of St. John's West

On April 30, 1997, Dr. Rex Gibbons announced his resignation in the House of Assembly as M.H.A. for the District of St. John's West and as Minister of Mines and Energy. Shortly thereafter, at his request, I met with Dr. Gibbons for the purpose of reviewing Section 30 of the Act as it pertains to the employment constraints imposed on Cabinet Ministers for 1 year after ceasing to hold office. During this 1 year post employment period, Dr. Gibbons further consulted with me on the provisions of the legislation to ensure that, in every respect, he was in compliance with the Act. My discussions with Dr. Gibbons confirmed his full compliance with the provisions pertaining to post employment constraints on him as a former Cabinet Minister.

V. Additional Conflict of Interest Guidelines for Cabinet Ministers Implemented by the Honourable the Premier

On November 19, 1997, in response to questions raised in the House of Assembly with respect to an appearance of a conflict of interest involving the Minister of Works, Services and Transportation and firms with which he was associated receiving contracts from his Department, Premier Tobin implemented additional Conflict of Interest Guidelines for Ministers. The Premier's statement to the Legislature pertaining to these guidelines for Ministers and the actual guidelines as implemented can be found in the Appendix to this Report. These additional guidelines are administered by the Commissioner of Members' Interests.

I am pleased to report that all Cabinet Ministers who were affected by these additional guidelines took the necessary action to the satisfaction of the Commissioner to promptly comply within the prescribed 30 day compliance requirement.

VI. Review of Legislation and Regulations

In my letter dated March 3, 1997, to each member I alluded to members expressing some frustration/annoyance with the length and complexity of the Annual Disclosure Statement. I invited comments from members as to how the document might be improved. No formal representations were received.

However, during the period covered in this my first Annual Report (i.e. April 1, 1997 to March 31, 1998), it is apparent in my many and varied discussions with members that a general view exists that the amount of detail required to be submitted in the Annual Disclosure of Private Interests is considerably burdensome and unnecessary. In the view of many members the requirement that they disclose to the Commissioner items such as credit card balances over three months, credit line outstanding over three months, pension rights, annuities and similar items, seems to be overly intrusive and not necessarily conflict of interest related.

The House of Assembly Act - Part II Conflict of Interest and the Regulations spell out in great detail the disclosure requirements. My knowledge of the intent of the Act and Regulations indicate that they are designed for the following purposes:

(i) To require members to disclose to the Commissioner **all assets and liabilities** so as to ensure **total disclosure**, regardless as to whether they are excluded private

interests or interests requiring public disclosure. This information is provided only to the Commissioner, in confidence, in order to protect the private interests of no relevance. In this way, it would appear the intent of the Act is to avoid the situation where the member uses personal judgement in determining what should and should not be submitted to the Commissioner in the Annual Disclosure.

(ii) From the completed Annual Disclosure submitted to the Commissioner, it is determined which items are excluded private interests in accordance with the Act and are not required to be publicly disclosed. The resulting **Public Disclosure Statement** is prepared by the Commissioner and only identifies each private interest other than excluded private interest of the member and the member's family. Only those private interests with potential for conflict are then publicly disclosed thus protecting the member from the frivolous disclosure of financial information of no conflict of interest value.

Thus two procedures are required under the Act, namely

(i) a full **annual disclosure to the Commissioner** by members of all assets and liabilities; and

(ii) a subsequent less intrusive **public disclosure** for the information of the public, prepared by the Commissioner and verified by the member, of only those items which are not considered excluded private interests but relevant to conflict of interest.

In light of the general concerns expressed by members with respect to the complexity and apparent irrelevance of some of the information required to be filed in the Annual Disclosure of Private Interests, a general review of the Act and Regulations would appear to be appropriate. This, I would suggest, might be accomplished by appointing a Committee of members to undertake such a review with a report being submitted to the Legislature for consideration in due course.

APPENDIX

APPENDIX

PREMIER'S STATEMENT

The following statement was issued by Premier Brian Tobin and was also read in the House of Assembly on November 19, 1997:

"In the last few days we have heard in this House groundless and unsubstantiated accusations of conflict of interest. The accusations are, in my view, politically motivated. They constitute an unfair attack on a member of this House and his family.

The conflict of interest provisions in place are designed to protect the public interest. This is fundamental. However, conflict of interest provisions must also act in a way which shelters those who serve from baseless accusations. With this in mind, today I am pleased to inform the House that I have put in place additional conflict of interest guidelines for Cabinet Ministers. These guidelines are in addition to the legislative requirements concerning conflict of interest set out in Part II of the House of Assembly Act.

The Act, as administered by the Commissioner of Members' Interests, Mr. Bob Jenkins, sets out a good framework to protect the public interest and avoid conflicts of interest. These additional guidelines go further than the Act, to ensure there is not only no conflict of interest, but that there is also no appearance of any such conflict.

The guidelines will take effect immediately. Ministers will have 30 days in which to comply with them. The guidelines will be administered by the Commissioner of Members' Interests. The additional guidelines are:

(1) Ministers shall place in a blind trust all assets, financial interests or other sources of income within the definition of "private interest" in S.20(e) of the Act, except for those that are an "excluded private interest" within the definition of S.20 (a) of the Act;

(2) Trustees for these blind trusts shall be other than members of the Minister's immediate family; and

(3) Ministers shall cease to serve as directors or officers in a company or association, as referred to in S.20(e)(iii) of the Act.

For the purpose of these guidelines: "blind trust" shall mean one in which the trustee is empowered to exercise all of the rights and privileges associated with the trust assets and makes all investment decisions concerning their management, with no direction from or control by the minister who placed the assets in trust; and "immediate family" shall mean parent, child, sibling or spouse.

I repeat, these guidelines shall be administered by the Commissioner of Members' Interests. Ministers shall comply with these guidelines promptly, and, within 30 days at the latest shall report to the Commissioner of Members' Interests on the steps taken to do so.

All members of Cabinet are now in compliance with the conflict of interest requirements of the House of Assembly Act. They now have 30 days to comply with these additional conflict of interest guidelines.

I have taken these measures to provide further assurance that the public interest is not only protected, but is seen to be so. That is important.

It is also important to ensure that those who have had success in business are not discouraged from offering themselves for elected office. To do so would be unfair and unwise. I believe that these additional conflict of interest guidelines make clear that the public interest is being protected, without discouraging those who may wish to participate in public life."